



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2013-0320]

RIN 1625-AA00

Safety Zone; Chicago Harbor; Navy Pier Southeast; Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the safety zone for Chicago Harbor, Navy Pier Southeast, Chicago, IL. This safety zone is intended to restrict vessels from a portion of Chicago Harbor during fireworks displays, races, and other marine events that occur throughout each calendar year. The safety zone established by this rule is necessary to protect spectators, participants, and vessels from the hazards associated with these fireworks displays, boat races, and other events.

DATES: This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2013-0320. To view documents mentioned in

this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact MST1 Joseph McCollum, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747-7148 or by email at Joseph.P.McCollum@USCG.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
TFR	Temporary Final Rule

A. Regulatory History and Information

On May 21, 2013, The Coast Guard published a notice of proposed rulemaking entitled "Safety Zone; Chicago Harbor, Navy Pier SE, Chicago IL" in the Federal Register (78 FR 29680). We did not receive any comments in response to the proposed rule. No public meeting was requested and one was not held.

B. Basis and Purpose

Each year dozens of fireworks displays are launched from barges in positions just south of the Navy Pier in Chicago. These fireworks displays, along with other marine events, take place on a monthly and sometimes weekly basis. The Captain of the Port, Lake Michigan, has determined that these fireworks displays and other events such as races or air shows pose a significant risk to public safety and property. Such hazards include falling debris and collisions among spectator vessels. To address these hazards the Coast Guard established a permanent safety zone for the protection of spectators during these displays and events in 33 CFR 165.931. This year, however, the Coast Guard was informed by Melrose Pyrotechnics that a new launch position will be used for some of the fireworks displays. This new position launches a display from a break wall south of the Navy Pier and would impact portions

of Chicago Harbor hundreds of feet beyond the boundaries of the zone as it is currently listed. To address this new launch position, and to ensure safety of spectators and vessels, this rule extends the boundaries of the safety zone within 33 CFR 165.931.

C. Discussion of Comments, Changes and the Final Rule

The Captain of the Port, Lake Michigan, has determined that a safety zone is necessary to mitigate the aforementioned safety risks. Thus, this rule amends 33 CFR 165.931 and establishes a permanent safety zone on Lake Michigan within Chicago harbor. This rule amends 33 CFR 165.931 to read: The following area is a safety zone: The waters of Lake Michigan within Chicago Harbor bounded by coordinates beginning at 41°53'26.5"N, 087°35'26.5"W; then south to 41°53'7.6"N, 087°35'26.3"W; then west to 41°53'7.6"N, 087°36'23.2"W; then north to 41°53'26.5"N, 087°36'24.6"W; then east back to the point of origin (NAD 83).

The Captain of the Port Lake Michigan will use all appropriate means to notify the public when the safety zone established by this rule will be enforced. Consistent with 33 CFR 165.7(a), such means may include, among other things, publication in the Federal Register, Broadcast Notice to Mariners, or Local Notice to Mariners.

Entry into, transiting, or anchoring within this safety zone during the period of enforcement is prohibited unless authorized by the Captain of the Port, Lake Michigan, or his or her designated on-scene representative. The Captain of the Port, Lake Michigan, or his or her designated on-scene representative may be contacted via VHF Channel 16.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security. We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of

any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced in short periods immediately before, during, and after the time the displays and events occur. Also, this safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit portions of the waterways not affected by the safety zone. Thus, restrictions on vessel movements within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port, Lake Michigan. On the whole, the Coast Guard expects insignificant adverse impact to mariners from the activation of this safety zone.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in portions of Chicago Harbor when this safety zone is being enforced.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in FOR FURTHER INFORMATION CONTACT section, above

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each

agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone and thus, is categorically excluded under paragraph (34)(g) of the Instruction. An environmental analysis checklist supporting this determination is available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165-- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

33 U.S.C. 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 165.931 to read as follows:

§ 165.931 Safety Zone; Chicago Harbor, Navy Pier Southeast, Chicago, IL.

(a) Location. The following area is a safety zone: The waters of Lake Michigan within Chicago Harbor bounded by coordinates beginning at 41°53'26.5"N, 087°35'26.5"W; then south to 41°53'7.6"N, 087°35'26.3"W; then west to 41°53'7.6"N, 087°36'23.2"W; then north to 41°53'26.5"N, 087°36'24.6"W then east back to the point of origin (NAD 83).

(b) Definitions. The following definitions apply to this section:

(1) *Designated representative* means any Coast Guard Commissioned, warrant, or petty officer designated by the Captain of the Port, Lake Michigan to monitor a safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zone, and take other actions authorized by the Captain of the Port.

(2) *Public vessel* means vessels owned, chartered, or operated by the United States, or by a State or political

subdivision thereof.

(c) Regulations. (1) In accordance with the general regulations in 33 CFR 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Lake Michigan, or his designated representative.

(2) This safety zone is closed to all vessel traffic, excepted as may be permitted by the Captain of the Port, Lake Michigan or his designated representative. All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or his designated representative. Upon being hailed by the U.S. Coast Guard by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(3) All vessels must obtain permission from the Captain of the Port or his designated representative to enter, move within, or exit the safety zone established in this section when this safety zone is enforced. Vessels and persons granted permission to enter the safety zone must obey all lawful orders or directions of the Captain of the Port or a designated representative.

(d) Notice of Enforcement or Suspension of Enforcement. The safety zone established by this section will be enforced only upon notice of the Captain of the

Port. The Captain of the Port will cause notice of enforcement of the safety zone established by this section to be made by all appropriate means to the affected segments of the public including publication in the Federal Register as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to Broadcast Notice to Mariners or Local Notice to Mariners.

(e) Exemption. Public vessels, as defined in paragraph (b) of this section, are exempt from the requirements in this section.

(f) Waiver. For any vessel, the Captain of the Port Lake Michigan or his designated representative may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of public or environmental safety.

Dated: July 1, 2013

M.W. SIBLEY
Captain, U.S. Coast Guard
Captain of the Port, Lake Michigan

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